IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Appeal No. 409 of 1999.

Judgement reserved on: 13.12.2005.

Date of decision : January 2,2006.

State of H.P. …. Appellant.

Versus

Gulab Singh ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. D.C.Pathik, Addl. Advocate General.

For the respondent: Mr. Ashwani K. Sharma, Advocate.

Surjit Singh J.

This appeal by the State is directed against the judgement of the trial Magistrate, whereby respondent Gulab Singh, hereinafter referred to as accused, who was sent up for trial for the offences, under Sections 354, 323 and 506 of the Indian Penal Code, has been acquitted.

In the report under Section 173 of the Code of Criminal Procedure, which was filed against the accused, it was alleged that

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Whether reporters of local Papers may be allowed to see the judgment?

on 24.12.1994 around 8.15 a.m. when the prosecutrix was standing by the side of the road and waiting for a bus, accused accompanied by his brother Madan Singh appeared from the bushes and caught hold of her by her arms and then pressed her breasts and when she raised alarm, her Chacha Fateh Singh, who was waiting for the bus at another bus-stop nearby, which was not visible from the spot, came there and on seeing him the accused ran away. The incident is stated to have been seen by two other persons, namely Sheela Devi and Babu Ram. The trial Magistrate charged the accused with the aforesaid offences and on his pleading not guilty, tried him and ultimately acquitted him of the charge.

Appellant's grievance is that the trial Magistrate has not appraised the evidence in accordance with the principles of appreciation of evidence which has resulted in the wrong acquittal of the accused.

I have heard the learned Additional Advocate General as also the counsel for the respondent.

A bare reading of the testimony of the prosecutrix shows that a large number of cases are pending in the courts, both criminal and civil, between the father of the prosecutrix and the father of the respondent. It is in the light of this background that the evidence of the prosecution is required to be weighed. The allegation is that the accused accompanied by his brother Madan Singh, appeared from the bushes near the spot and assaulted the prosecutrix with a view to outraging her modesty. Normally two brothers won't indulge in this type of immoral conduct in the

presence of each other. The prosecutrix has made inconsistent statement as to the manner of the assault. While in the examination-in-chief, she says that she was caught hold of by her arms by the accused and then he pressed her breasts, but in the cross-examination, she says that when she was caught hold of her arms by the accused, her Chacha Fateh Singh appeared. That means, Fateh Singh appeared before the accused allegedly pressed the breasts of the prosecutrix. However, Fateh Singh does not say that the accused had pressed the breasts of the prosecutrix. He simply says that the accused had caught hold of the prosecutrix by her arms.

It has been admitted by the prosecutrix and her Chacha that a report was lodged against them by the accused and his father that they had been beaten up by them (the prosecutrix and her Chacha and her father) on the very day and at the very time of the occurrence and that they (the accused and his father) were got medically examined by the police.

In view of the above stated position, the possibility of the version of the prosecution that the accused tried to outrage the modesty of the prosecutrix, being untrue, cannot be ruled out, especially when the prosecutrix does not deny in her cross-examination that her father once lodged a report with the police about her having gone missing and admits that she has married a man against the wishes of her parents.

For the foregoing reasons, the appeal is dismissed.

January 2, 2006. **(Surjit Singh),**
(Hem) **Judge.**